Supreme Court, U.S.
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No. 05-613

In The
Supreme Court of the United States

CHEZ DOUGLAS,

Petitioner,

v.

PAMELA DOBBS, SCOTT KEY and DISTRICT ATTORNEY'S OFFICE FOR THE TWELFTH JUDICIAL DISTRICT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This 42 U.S.C. § 1983 action was brought to vindicate the violation by Respondents of Petitioner's civil rights. Respondents conducted a warrantless search of Petitioner's private prescription records, violating her right to privacy. The Tenth Circuit Court of Appeals held that persons have a right to privacy in their prescription drug records. However, the Court of Appeals held that Petitioner failed to demonstrate violation of a clearly established constitutional right, and affirmed the District Court's determination that Respondents were entitled to qualified immunity.

The questions presented are:

I.

IT IS CLEARLY ESTABLISHED THAT THE FOURTH AMENDMENT PROHIBITS A LAW ENFORCEMENT OFFICER FROM SEARCHING A PERSON'S PRIVATE PRESCRIPTION RECORDS WITHOUT A WARRANT SUPPORTED BY PROBABLE CAUSE OR REASONABLE SUSPICION.

II.

THE TENTH CIRCUIT AND THE DISTRICT COURT ERRED IN CONCLUDING THAT RESPONDENTS WERE ENTITLED TO QUALIFIED IMMUNITY.

LIST OF PARTIES AND RULE 29.1 LIST

The caption of this petition identifies all parties in the lower court and Court of Appeals.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES AND RULE 29.1 LIST	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE	1
STATEMENT OF THE CASE	2
COURSE OF PROCEEDINGS AND DISPOSITION BELOW	5
REASONS FOR GRANTING THE WRIT	7
I. IT IS CLEARLY ESTABLISHED THAT THE FOURTH AMENDMENT PROHIBITS A LAW ENFORCEMENT OFFICER FROM SEARCHING A PERSON'S PRIVATE PRESCRIPTION RECORDS WITHOUT A WARRANT SUPPORTED BY PROBABLE CAUSE OR REASONABLE SUSPICION	8
II. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE DISTRICT ATTORNEY DEFENDANT WAS ENTITLED TO QUALIFIED IMMUNITY	15
CONCLUSION	19

TABLE OF CONTENTS – Continued

Page

APPENDICES

Appendix A
Opinion of the Court of Appeals .....App. 1

Appendix B
Memorandum Opinion and Order of the District Court .....App. 13

TABLE OF AUTHORITIES

Page

CASES

A.L.A. v. West Valley City, 26 F.3d 989 (10th Cir. 1994) 5, 7, 10, 11, 13

Anderson v. Creighton, 483 U.S. 635 (1987) 9

Brossau v. Haugen, 543 U.S. 194, 125 S.Ct. 596 (2004) 9

Doe v. Southeastern Penn. Transp. Auth., 72 F.3d 1133 (3rd Cir. 1995) 11, 14

Douglas v. Dobbs, 419 F.3d 1097 (10th Cir. 2005) 1

Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) 11

F.E.R. v. Valdez, 58 F.3d 1530 (10th Cir. 1995) 5

General Electric Co. v. Joiner, 522 U.S. 136, 118 S.Ct. 512 (1997) 9

Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965) 11

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 8, 15

Herring v. Keenan, 218 F.3d 1171 (10th Cir. 2000) 5, 7, 10, 12

Hollingsworth v. Hill, 110 F.3d 733 (10th Cir. 1997) 16

Katz v. United States, 389 U.S. 347 (1967) 15

Kalina v. Fletcher, 522 U.S. 118 (1997) 19

Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994) 5, 7, 11, 12

Malley v. Briggs, 475 U.S. 335 (1985) 18

Mangels v. Pena, 789 F.2d 836 (10th Cir. 1986) 13

TABLE OF AUTHORITIES – Continued

Page

Minnesota v. Carter, 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998) 6

Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 2806 (1985) 9

Montes v. Gallegos, 812 F.Supp. 1159 (D.N.M. 1992) 18

Murphy v. State, 115 Wash.App. 297, 62 P.3d 533 (2003) 6

Murphy v. Townsend, 187 F.3d 648, 1999 WL 439468 (9th Cir. 1999) 6

Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937) 12

Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976) 10

Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) 10, 12

Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151 (2001) ... 9, 10

Slayton v. Willingham, 726 F.2d 631 (10th Cir. 1984) 13

Stidham v. Peace Officer Stds. & Training, 265 F.3d 1144 (10th Cir. 2001) 11

State v. Russo, 259 Conn. 436, 790 A.2d 1132 (Conn. 2002) 6, 13

State v. Welch, 160 Vt. 70, 624 A.2d 1105 (1992) 6

United States ex rel. Terraciano v. Montanye, 493 F.2d 682 (2d Cir. 1974) 6

United States v. Enserro, 401 F.Supp. 460 (W.D.N.Y. 1975) 6

TABLE OF AUTHORITIES – Continued

Page

United States v. Jamieson-McKames Pharm., Inc., 651 F.2d 532 (8th Cir. 1981) 6

United States v. Nechy, 827 F.2d 1161 (7th Cir. 1987) 6

United States v. Sutherland, 143 F.Supp.2d 609 (D. Va. 2001) 14

United States v. Thomas, 372 F.3d 1173 (10th Cir. 2004) 5

United States v. Winstar Corp., 518 U.S. 839, 116 S.Ct. 2432 (1996) 9

Whalen v. Roe, 429 U.S. 589 (1977) 7, 12, 13, 14

Wilson v. Layne, 526 U.S. 603 (1999) 8

CONSTITUTION

U.S. Const. amend. IV ..... *passim*

STATUTES

28 U.S.C. § 1254 1

42 U.S.C. § 1983 ..... 1, 2, 8

OTHER

16 NMAC 19.4.9(C)(8) 14

16 NMAC 19.27.7(B)(7) 14

16 NMAC 19.6.23(G) 14

Rule 6-208 NMRA (2005) 16

TABLE OF AUTHORITIES – Continued

Page

Rule 6-606 NMRA (2005) 17

Form 9-217 NMRA (2005) 17

Form 9-503 NMRA (2005) 17

PETITION FOR A WRIT OF CERTIORARI

Chez Douglas respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 419 F.3d 1097 (10th Cir. 2005). It is reprinted in the Appendix (App.) at App. 1. The unpublished Memorandum Opinion and Order of the District Court for the District of New Mexico is reprinted at App. 13. There were no petitions for rehearing in either the Court of Appeals or the District Court.

JURISDICTION

The Tenth Circuit Court of Appeals entered its judgment on August 16, 2005. No petition for rehearing was filed. This Court has jurisdiction to review the judgment by writ of certiorari under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

The questions presented involve the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

> violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

PETITIONER Chez Douglas (hereinafter "Petitioner") brought this action against Respondents (hereinafter "Respondents") pursuant to 42 U.S.C. § 1983 for violation of her Fourth Amendment rights. Petitioner's civil rights were violated when Respondents participated in a warrantless search of her private prescription records, conducted by the Ruidoso (New Mexico) Police Department. On January 19, 2001, Sergeant Randy Spear ("Spear") of

the Ruidoso Police Department had a conversation with Dr. Christopher Robinson ("Robinson") in which Robinson provided Spear confidential information about Plaintiff's medical condition. (App. 2). Plaintiff was a patient of Dr. Robinsons. (App. 2) According to Spear, the only information provided to him was that Robinson had prescribed pain medication to Plaintiff, Robinson suspected Plaintiff of abusing prescription medication, and Robinson suspected Plaintiff of obtaining prescriptions using a different name. (App. 2). Following this conversation, Spear and the District Attorneys drafted a *Motion and Order to Produce Prescription Information* (hereinafter *Motion and Order to Produce*) and sought its entry in the magistrate court of Lincoln County. The *Motion and Order to Produce* took the form of a pleading styled *State of New Mexico vs. Chaez (sic) Douglas, AKA Reanee (sic) Haynes*, without a case or filing number. The *Motion and Order to Produce* contained the affidavit of Pamela B. Dobbs, Assistant Attorney General, with venue in Lincoln County, New Mexico, directed to "Walgreens Drug Store, located at 138 Sudderth Dr., Ruidoso, New Mexico". (App. 2-3) The body of the *Motion and Order to Produce* stated:

> 1. THAT ON JANUARY 18TH, 2001 THE AFFIANT WAS CONTACTED BY DR. ROBINSON ADVISING THAT THE DEFENDANT HAS BEEN IN HIS OFFICE SEVERAL TIMES SEEKING PAIN MEDICATION, AND THAT THE DEFENDANT IS ALSO SEEING A DOCTOR IN ROSWELL, NEW MEXICO.
>
> 2. THAT AFFIANT (sic) THAT REASONABLE SUSPICION EXISTS FOR THE ISSUANCE OF THIS MOTION AND ORDER TO PRODUCE PRESCRIPTION INFORMATION IN ORDER TO PROVE OR DISPROVE ANY INVOLVEMENT